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Attorneys for Defendants  
 Landmark Towne Center, LLC; Aglos, LLC; Dinky, LLC and; GF Liberty, LLC

**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**

NICOLE MOSS, an individual; and  
 DISABILITY RIGHTS, ENFORCEMENT,  
 EDUCATION, SERVICES: HELPING  
 YOU HELP OTHERS, a California public  
 benefit corporation

Plaintiffs,

vs.

MANILA BAY CUISINE; LANDMARK  
 TOWNE CENTER, LLC, a Delaware  
 limited liability company; AGLOS, LLC, a  
 Delaware limited liability company;  
 DINKY, LLC, a Delaware limited liability  
 company; GF LIBERTY, LLC, a Delaware  
 limited liability company; CRIMSUN,  
 INC., a California corporation,

Defendants.

CASE NO. C06-6356

ANSWER TO PLAINTIFF'S COMPLAINT  
 FOR INJUNCTIVE RELIEF AND  
 DAMAGES

JURY TRIAL REQUESTED

1 Defendants Landmark Towne Center, LLC; Aglos, LLC; Dinky, LLC and; GF Liberty,  
2 LLC (hereinafter collectively referred to as “defendants”) hereby generally deny each and  
3 every allegation in plaintiffs Nicole Moss (“Moss”) and the Disability Rights, Enforcement,  
4 Education, Services: Helping You Help Others (“DREES”) (sometimes collectively referred to  
5 as “plaintiffs”) complaint filed on October 11, 2006 (“complaint”), and specifically deny that  
6 plaintiffs have been damaged in any sum whatsoever and further specifically deny that  
7 plaintiffs are entitled to any relief in any form whatsoever by reason of any act or omission of  
8 these answering defendants, and further responds to plaintiffs’ complaint as follows:

9 1. Answering paragraph 1 of the complaint, defendants lack knowledge or  
10 information sufficient to form a belief as to the truth of the allegations concerning plaintiff  
11 Moss’ physical condition, and on that basis deny those allegations, and deny each and every  
12 remaining allegation of this paragraph.

13 2. Answering paragraph 2 of the complaint, defendants lack knowledge or  
14 information sufficient to form a belief as to the truth of the allegations concerning plaintiff  
15 Moss’ physical condition, and on that basis deny those allegations, and deny each and every  
16 remaining allegation of this paragraph.

### 17 JURISDICTION AND VENUE

18 3. Answering paragraph 3 of the complaint, defendants admit that this Court has  
19 jurisdiction over this action pursuant to 28 U.S.C. § 1331, but deny that defendants have  
20 violated any applicable law or statute, including but not limited to the Americans with  
21 Disabilities Act, 42 U.S.C. 12101, et seq., Cal. Health & Safety Code § 19955, et seq., Title 24  
22 of the California Code of Regulations, and the California Unruh Act, Cal. Civ. Code §§ 51, 54  
23 and 54.1.

24 4. Defendant admits the allegations contained in paragraph 4 of the complaint.

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**PARTIES**

5. Answering paragraph 5 of the complaint, defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations concerning plaintiff Moss' physical condition, and on that basis deny those allegations, and deny each and every remaining allegation of this paragraph.

6. Answering paragraph 6 of the complaint, defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations concerning patron plaintiff DREES' membership, and on that basis deny those allegations, and deny each and every remaining allegation of this paragraph.

7. Answering paragraph 7 of the complaint, defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations concerning patronage of Manila Bay Cuisine by DREES members, and on that basis deny those allegations, and deny each and every remaining allegation of this paragraph.

8. Answering paragraph 8 of the complaint, defendants admit that they own the subject shopping center and that the shopping center and restaurant are public accommodations under the referenced statutes, defendants further admit that they lease premises to Manila Bay Cuisine located at/near 1230 El Camino Real #J, San Bruno, California, however, defendants lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in said paragraph, and on that basis deny the remaining allegations contained in said paragraph.

9. Answering paragraph 9 of the complaint, defendants admit that they own the subject shopping center and that the shopping center and restaurant are public accommodations under the referenced statutes, defendants further admit that they lease premises to Manila Bay Cuisine, however, defendants lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in said paragraph, and on that basis deny the remaining allegations contained in said paragraph.

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1           10.     Answering paragraph 10 of the complaint, defendants admit that the referenced  
2 regulation speaks for itself, and lacks knowledge or information sufficient to form a belief as to  
3 the truth of the remaining allegations contained in said paragraph, and on that basis deny the  
4 remaining allegations contained in said paragraph. As a further answer to this paragraph,  
5 defendant deny that it has violated any applicable law or statute.

6                           **PRELIMINARY FACTUAL ALLEGATIONS**

7           11.     Answering paragraph 11 of the complaint, defendants admit that Manila Bay  
8 Cuisine is located at/near 1230 El Camino Real #J, San Bruno, California, however,  
9 defendants lack knowledge or information sufficient to form a belief as to the truth of the  
10 remaining allegations contained in said paragraph, and on that basis deny the remaining  
11 allegations contained in said paragraph.

12           12.     Answering paragraph 12 of the complaint, defendants lack knowledge or  
13 information sufficient to form a belief as to the truth of the allegations concerning plaintiff  
14 Moss' membership in DREES, and on that basis deny those allegations, and deny each and  
15 every remaining allegation of this paragraph.

16           13.     Answering paragraph 13 of the complaint, defendants lack knowledge or  
17 information sufficient to form a belief as to the truth of the allegations concerning defendant  
18 Manila Bay Cuisine's advertising regarding accessibility, and on that basis deny those  
19 allegations, and deny each and every remaining allegation of this paragraph.

20           14.     Answering paragraphs 14, 15, 16, 17, 18 and 19 of the complaint, defendants  
21 lack knowledge or information sufficient to form a belief as to the truth of the allegations  
22 concerning plaintiff Moss' patronage of Manila Bay Cuisine, and on that basis deny those  
23 allegations, and deny each and every remaining allegation of those paragraphs.

24           15.     Answering paragraph 20 of the complaint, defendants deny that plaintiff Moss  
25 wrote to defendants as the landlord. Defendants lack knowledge or information sufficient to  
26 form a belief as to the truth of the allegations concerning plaintiff Moss' correspondence with  
27  
28

1 Manila Bay Cuisine, and on that basis deny those allegations, and deny each and every  
2 remaining allegation of this paragraph.

3 16. Answering paragraph 21 of the complaint, defendants lack knowledge or  
4 information sufficient to form a belief as to the truth of the allegations concerning plaintiff  
5 Moss' patronage of Manila Bay Cuisine, and on that basis deny those allegations, and deny  
6 each and every remaining allegation of this paragraph.

7 17. Answering paragraphs 22 and 23 of the complaint, defendants lack knowledge  
8 or information sufficient to form a belief as to the truth of the allegations concerning the  
9 alleged "architectural barriers" encountered, and on that basis deny those allegations, and deny  
10 each and every remaining allegation of those paragraphs.

11 18. Answering paragraph 24 of the complaint, defendants deny that plaintiff Moss  
12 wrote to defendants as the landlord and deny receiving the letters attached to the complaint as  
13 Exhibit A, said letters being addressed solely to Manila Bay Cuisine. Defendants lack  
14 knowledge or information sufficient to form a belief as to the truth of the allegations  
15 concerning plaintiff Moss' correspondence with Manila Bay Cuisine, and on that basis deny  
16 those allegations, and deny each and every remaining allegation of this paragraph.

17 19. Defendants deny the allegations contained in paragraphs 26, 27, 28 and 29.

18 20. Answering paragraph 30 of the complaint, defendants lack knowledge or  
19 information sufficient to form a belief as to the truth of the allegations concerning alterations  
20 of Manila Bay Cuisine, and on that basis deny those allegations, and deny each and every  
21 remaining allegation of this paragraph.

22 21. Answering paragraphs 31, 32, 33, 34, 35 and 36 of the complaint, defendants  
23 admit that the referenced statutes speak for themselves, and lack knowledge or information  
24 sufficient to form a belief as to the truth of the remaining allegations contained in said  
25 paragraphs, and on that basis deny the remaining allegations contained in those paragraphs. As  
26 a further answer to these paragraphs, defendants deny that they have violated any applicable  
27 law or statute.

22. Answering paragraph 37 of the complaint, defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations concerning plaintiffs Moss and DREES, and on that basis deny those allegations, and deny each and every remaining allegation of this paragraph.

**FIRST CAUSE OF ACTION FOR DENIAL OF ACCESS BY A PUBLIC  
ACCOMMODATION IN VIOLATION OF THE AMERICANS WITH DISABILITY  
ACT OF 1990 (42 U.S.C. §§ 12101, *et seq.*)**

23. Answering paragraph 38 of the complaint, defendants incorporate their responses to paragraphs 1 through 37 as though fully set forth herein.

24. Answering paragraphs 39, 40, 41, 42, 43, 44, 45, 46, 47, 48 and 49 of the compliant defendants admit that the referenced statutes speak for themselves, and lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in said paragraphs, and on that basis deny the remaining allegations contained in those paragraphs. As a further answer to these paragraphs, defendants deny that they have violated any applicable law or statute.

**SECOND CAUSE OF ACTION FOR DENIAL OF FULL AND EQUAL ACCESS IN  
VIOLATION OF CALIFORNIA CIVIL CODE §§ 54, 54.1 AND 54.3, *ET SEQ.***

25. Answering paragraph 50 of the complaint, defendants incorporate their responses to paragraphs 1 through 49 as though fully set forth herein.

26. Answering paragraphs 51, 52, 53, 54, 55, 56, 57 and 58 of the complaint, defendants admit that the referenced statutes speak for themselves, and lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in said paragraphs, and on that basis deny the remaining allegations contained in those paragraphs. As a further answer to these paragraphs, defendants deny that they have violated any applicable law or statute.

**THIRD CAUSE OF ACTION FOR DENIAL OF ACCESSIBLE SANITARY  
FACILITIES IN VIOLATION OF HEALTH & SAFETY CODE §§ 19955, *ET SEQ.***

27. Answering paragraph 59 of the complaint, defendants incorporate their responses to paragraphs 1 through 58 as though fully set forth herein.

28. Answering paragraphs 60, 61, 62, 63, 64, 65 and 66 of the complaint, defendants admit that the referenced statutes speak for themselves, and lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in said paragraphs, and on that basis deny the remaining allegations contained in those paragraphs. As a further answer to these paragraphs, defendants deny that they have violated any applicable law or statute.

**FOURTH CAUSE OF ACTION FOR DENIAL OF ACCESS TO FULL AND EQUAL  
ACCOMODATIONS, ADVANTAGES, FACILITIES, PRIVILEGES AND/OR  
SERVICES IN VIOLATION OF CALIFORNIA CIVIL CODE §§ 51, ET SEQ.  
(THE UNRUH CIVIL RIGHTS ACT)**

29. Answering paragraph 67 of the complaint, defendants incorporate their responses to paragraphs 1 through 66 as though fully set forth herein.

30. Answering paragraphs 68, 69, 70 and 71 of the complaint, defendants admit that the referenced statutes speak for themselves, and lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in said paragraphs, and on that basis deny the remaining allegations contained in those paragraphs. As a further answer to these paragraphs, defendants deny that they have violated any applicable law or statute.

**PRAYER FOR RELIEF**

The remaining paragraphs of the complaint contain plaintiffs' prayer for relief to which no response is required. To the extent a response may be required, defendants deny that plaintiffs are entitled to the relief sought in these paragraphs.

**AFFIRMATIVE DEFENSES**

AS A FIRST AFFIRMATIVE DEFENSE, defendants are informed and believe that plaintiff has failed to state facts sufficient to constitute a cause of action against defendant.

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1 AS A SECOND AFFIRMATIVE DEFENSE, defendants are informed and believe  
2 that each cause of action is barred by the applicable statute of limitations including, but not  
3 limited to: California Civil Procedure Code Sections 337, 338, 339, 340, 340.6, 343, 42  
4 U.S.C. § 12101 et seq., Cal. Civ. Code § 510, et seq.

5 AS A THIRD AFFIRMATIVE DEFENSE, defendants are informed and believe that  
6 all alleged acts or omissions were privileged by, among other things, Cal. Civ. Code § 47.

7 AS A FOURTH AFFIRMATIVE DEFENSE, defendants are informed and believe  
8 that plaintiffs are guilty of negligence which proximately caused and/or contributed to their  
9 damages, if any.

10 AS A FIFTH AFFIRMATIVE DEFENSE, defendants are informed and believe that to  
11 the extent that plaintiffs have or will suffer any damages, which defendants deny, said  
12 damages were or will be caused solely or proximately by the conduct of plaintiffs, other parties  
13 and third parties who are not parties in this action.

14 AS A SIXTH AFFIRMATIVE DEFENSE, defendants are informed and believe that  
15 plaintiffs have failed to mitigate their damages, if any.

16 AS A SEVENTH AFFIRMATIVE DEFENSE, defendants are informed and believe  
17 that plaintiffs are guilty of laches in failing to timely assert their claims.

18 AS AN EIGHTH AFFIRMATIVE DEFENSE, defendants are informed and believe  
19 that plaintiffs are estopped by their acts, omissions and representations from asserting the  
20 claims in the complaint.

21 AS A NINTH AFFIRMATIVE DEFENSE, defendants are informed and believe that  
22 plaintiffs ratified the conduct which is the subject matter of the complaint.

23 AS A TENTH AFFIRMATIVE DEFENSE, defendants are informed and believe that  
24 plaintiffs did not rely on any act or omission of defendants.

25 AS AN ELEVENTH AFFIRMATIVE DEFENSE, defendants are informed and  
26 believe that plaintiffs have released and waived the claims alleged in the complaint against  
27 defendants by, including but not limited to, their acts, omissions and representations.  
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1 AS A TWELFTH AFFIRMATIVE DEFENSE, defendants are informed and believe  
2 that plaintiffs had knowledge of, and assumed the risks incident to the matters alleged in the  
3 complaint.

4 AS A THIRTEENTH AFFIRMATIVE DEFENSE, defendants are informed and  
5 believe that if any wrongful conduct was engaged in by other parties and/or unnamed third  
6 parties, plaintiffs directly or indirectly acted in concert with those other parties or persons or  
7 knowingly ratified or approved such conduct and are therefore precluded from recovering  
8 under the doctrine of in pari delicto.

9 AS A FOURTEENTH AFFIRMATIVE DEFENSE, defendants are informed and  
10 believe that plaintiffs are barred from asserting their claims and are guilty of unclean hands by  
11 virtue of their acts and omissions and the acts and omissions of their agents and  
12 representatives with respect to the matters alleged in the complaint.

13 AS A FIFTEENTH AFFIRMATIVE DEFENSE, defendants are informed and believe  
14 that if plaintiffs' damages, if any, were the fault of the negligence, if any, of other parties to  
15 this action, defendants are informed and believe that these answering defendants' liability is  
16 limited to its percentage share of liability, if any, which liability is expressly denied and  
17 contested, subject to Civil Code Section 1431, et seq. (The California Fair Responsibility Act  
18 of 1986)

19 AS A SIXTEENTH AFFIRMATIVE DEFENSE, defendants are informed and believe  
20 that if there are persons and entities, both named and unnamed in the complaint herein, who  
21 either are or may be legally and proximately responsible for plaintiffs' alleged damages, if any,  
22 defendants request that this Court determine the nature and extent of said fault by other parties  
23 and determine a proper allocation of the same between these parties for the purpose of  
24 permitting equitable contribution among these parties toward any judgment recovered by the  
25 complaint pursuant to the rule of American Motorcycle Association v. Superior Court.

1 AS A SEVENTEENTH AFFIRMATIVE DEFENSE, defendants are informed and  
2 believe that plaintiffs lacks standing to bring the claims alleged in the complaint in that they  
3 are not persons aggrieved by the violations alleged.

4 AS AN EIGHTEENTH AFFIRMATIVE DEFENSE, defendants are informed and  
5 believe that the relief and modifications that plaintiffs seek to impose would require  
6 construction, alteration, or structural modification of the subject premises which are not  
7 readily achievable.

8 AS A NINETEENTH AFFIRMATIVE DEFENSE, defendants are informed and  
9 believe that the relief sought by plaintiffs, including the architectural, communications, and  
10 structural modifications sought, would cause an undue hardship on defendants.

11 AS A TWENTIETH AFFIRMATIVE DEFENSE, defendants are informed and  
12 believe plaintiffs' claims are barred in whole or in part because plaintiffs failed to exhaust  
13 their administrative remedies pursuant to, among other things, 42 U.S.C. § 2000a-3(c) and  
14 Cal. Govt. Code § 12948.

15 AS A TWENTY-FIRST AFFIRMATIVE DEFENSE, defendants are informed and  
16 believe that plaintiffs' claims are in whole or in part moot.

17 WHEREFORE, defendants pray for judgment as follows:

- 18 1. That plaintiffs take nothing;
- 19 2. For costs of suit including reasonable attorney's fees; and
- 20 3. For such further relief that the Court deems just and proper.

21 Dated: December 22, 2007

STEYER LOWENTHAL BOODROOKAS  
ALVAREZ & SMITH LLP

22  
23 By: /s/ Edward Egan Smith  
24 Jeffrey H. Lowenthal  
25 Edward Egan Smith  
26 Jessica C. Grannis  
27 Attorneys for Defendant Attorneys for  
28 Defendants Landmark Towne Center,  
LLC; Aglos, LLC; Dinky, LLC and; GF  
Liberty, LLC

**DEMAND FOR JURY TRIAL**

Defendants Landmark Towne Center, LLC; Aglos, LLC; Dinky, LLC and; GF Liberty, LLC hereby demand a trial by jury of all issues in the present action to which they are entitled to a trial by jury.

Dated: December 22, 2007

STEYER LOWENTHAL BOODROOKAS  
ALVAREZ & SMITH LLP

By: /s/ Edward Egan Smith  
Jeffrey H. Lowenthal  
Edward Egan Smith  
Jessica C. Grannis  
Attorneys for Defendant Attorneys for  
Defendants Landmark Towne Center,  
LLC; Aglos, LLC; Dinky, LLC and; GF  
Liberty, LLC

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Attorneys for Defendants  
Landmark Towne Center, LLC; Aglos, LLC; Dinky, LLC and; GF Liberty, LLC

**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**

NICOLE MOSS, an individual; and	)	CASE NO. C06-6356
DISABILITY RIGHTS, ENFORCEMENT,	)	
EDUCATION, SERVICES: HELPING	)	
YOU HELP OTHERS, a California public	)	CERTIFICATE OF SERVICE
benefit corporation	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	
MANILA BAY CUISINE; LANDMARK	)	
TOWNE CENTER, LLC, a Delaware	)	
limited liability company; AGLOS, LLC, a	)	
Delaware limited liability company;	)	
DINKY, LLC, a Delaware limited liability	)	
company; GF LIBERTY, LLC, a Delaware	)	
limited liability company; CRIMSUN,	)	
INC., a California corporation,	)	
	)	
Defendants.	)	
	)	
	)	
	)	

**CERTIFICATE OF SERVICE**

Case No. C 06-6356  
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CERTIFICATE OF SERVICE

I declare that I am over the age of eighteen years and that I am not a party to this action. I am an employee of Steyer Lowenthal Boodrookas Alvarez & Smith LLP, and my business address is One California Street, Suite 300, San Francisco, CA 94111.

On the date set forth below, I served the following document(s):

ANSWER TO PLAINTIFF'S COMPLAINT FOR INJUNCTIVE RELIEF AND DAMAGES

[x] by sending the true copies thereof as designated below:

[x] by placing [ ] the original [x] a true copy thereof enclosed in sealed envelopes addressed as follows:

Thomas E. Frankovich  
2806 Van Ness Avenue  
San Francisco, CA 94109  
Telephone (415) 674-8600  
Fax (415) 674-9900  
*[Attorney for Plaintiffs]*

Nathan Paco  
Law Offices of Nathan Paco  
1419 Burlingame Ave., 2<sup>nd</sup> Floor  
Burlingame, CA 94010  
Telephone (650) 343-1371  
Fax (650) 343-7979  
*[Attorneys for Defendants  
Crimsun, Inc. dba Manila Bay Cuisine]*

[x] **BY MAIL.** I am readily familiar with my firm's practice for collection and processing of correspondence for mailing with the U.S. Postal Service, to wit, that correspondence will be deposited with the U.S. Postal Service this same day in the ordinary course of business. I sealed said envelope and placed it for collection and mailing following ordinary business practices.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on December 22, 2006, at San Francisco, California.

/s/ Elizabeth R. Costiniano

CERTIFICATE OF SERVICE

Case No. C 06-6356

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